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MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of :
Saville, et al. : DECISION REFUSING STATUS
Application No. 10/797,019 : UNDER 37 CFR 1.47(a)
Filed: March 11, 2004 :
Atty. Dkt. No.: 27462 :
For: ENHANCEMENT OF ENZYME :
ACTIVITY BY SELECTIVE :
PURIFICATION :

This decision is in response to the petition under 37 CFR 1.47(a), filed August 17, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed March 11, 2004 without an executed oath or declaration. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed June 1, 2004 requiring, *inter alia*, an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (1) set forth above. Petitioners have failed to establish that the inventor cannot be reached or refused to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, and oath or declaration).

Petitioner has provided no evidence that the non-signing inventor received a complete copy of the application papers (**specification, claims, drawings, and oath or declaration**) and thereafter refused to execute the oath or declaration. The affidavit of Andrew Desparats indicates that the applications papers were not mailed to the non-signing inventor. Declarant further indicates that the non-signing inventor on more than one occasion requested he be mailed a copy of the application papers for his review. Declarant also states efforts to schedule a meeting with the non-signing inventor at a location determined by declarant acting on behalf of assignee was unsuccessful.

The fact that the non-signing inventor has not made himself available at the request of petitioners to review the application papers at a location determined by petitioners does not establish a refusal to sign the oath or declaration.

Before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. Petitioner has failed to establish that the non-signing inventor received a copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration.

Any renewed petition should be accompanied by evidence to establish that the non-signing inventor was sent a complete copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the declaration. Petitioner may wish to provide the Office copies of letters sent to the inventor indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventor receives the application papers and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

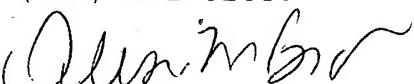
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310. Telephone inquiries after September 27, 2004 should be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions